



## Lamoine Board of Selectmen Minutes of September 21, 2006

Chair Jo Cooper called the meeting to order at 7:05 PM

Present were: Selectmen Brett Jones, Perry Fowler, Josephine Cooper, Cynthia Donaldson; Administrative Assistant Stu Marckoon, Bob Alvarez, Michael Jordan (Planning Board), Kathleen DeFusco, John Wuorinen (Appeals Board), Dale Macurdy, Mark Sarro and companion, Steve Salsbury, Michael Garrett (Planning Board), Gerald Ford (Harbor Master), Dennis Ford (Code Enforcement Officer/Road Commissioner), Jane Fowler (Assessor) and Merle Bragdon (CTV operator).

**Agenda Review** - Cynthia said she would like to have an executive session at the end of the meeting on a personnel matter.

**Minutes of September 7, 2006:** Jo said she had some minor typo and language corrections. Perry moved to approve the minutes with the changes. Jo 2<sup>nd</sup>. **Vote in favor was 4-0.**

**Meeting with Steve Salsbury re: excess gravel taken** – Jo thanked Mr. Salsbury for the checks from Doug Gott & Sons, Inc (Gott). Mr. Salsbury said the company has fulfilled the terms of their contract in regard to the gravel operation, and he wished to set up a site visit. Jo said it would be this Saturday at 9:00 at the Transfer Station. Mr. Salsbury agreed that time, which had been previously discussed, was still OK with him.

Brett asked how an extraction of 3-times the agreed upon amount happened. Mr. Salsbury said the contract began in 2001 with an agreement to extract 160,000 yards of material. He showed on the map where it was to come from. He said included in that figure was an area he referred to as the “high bluff” to the northeast of the transfer station. He said the Planning Board would not approve of that removal, so the contract was amended downward to 94,000 yards, indicated by the area in blue on the map that was displayed.

Mr. Salsbury said in the following year Gott approached the town about removing the area in yellow, and the Selectmen and Gott were co-applicants before the Planning Board to take gravel in the “yellow” area. He said he never estimated the volume for the entire permitted area. He said the contract called for payment of \$1.25 per yard, and that was more than covered under the contracts in question.

Brett asked Jo if she recalled agreeing to the additional amount to be removed. He asked Mr. Salsbury who gave Gott permission to remove the additional area. Mr. Salsbury replied the Selectmen did. Jo said she thought the board took a vote. She said there

probably should have been a separate contract. Mr. Salsbury said that additional area should have been an inclusion in the estimated payments.

Perry said he remembered from when he served on the Planning Board that Gott was not able to take the "high bluff". He said there has to be some record or a permit. Mr. Salsbury said when the Planning Board disallowed the "high bluff"; the Selectmen suggested that Gott go back to the yellow area. He said there was a safety issue with the bluff in the yellow area. He said he knows there was a letter from the Selectmen naming Gott and the Selectmen as co-applicants for the permit.

Brett said the town is in this position because of the negligence of the Selectboard. He said to sell \$230,000 worth of gravel on a handshake deal is a bad way to do business. Jo said she took exception to Brett's use of the term negligence, and a brief heated exchange took place.

Brett asked how the town could find out how much was actually removed. He said he would like to know if Gott was taking gravel without permission or not. Jo said somebody forgot to put the additional area into a contract.

Bob Alvarez said everyone should be elated this matter is getting resolved. Jo said she is trying to find out the facts. She said a mistake was found, and she would like to go forward and not make more mistakes. She said the board was trying to do the best that it could. Mr. Alvarez said Gott was doing the honorable thing, but there should be some way of verifying the facts. He said the town should hire an engineering service and get Mr. Salsbury's cooperation to verify the amounts.

Brett said he came to the meeting thinking that Gott had taken 190,000 yards of material without permission and that was pretty egregious. He said now the Selectboard is being presented with more information. Perry said the contract wasn't really for 100,000 yards, but for an area marked on a map estimated at 100,000 yards. Brett asked what kind of deviation one could expect. He said he's confused and frustrated with the paper trail, which appears to be non-existent.

Mr. Alvarez said an inventory is an easy thing to do. He said if scientists can inventory a hole on Mars, they should be able to inventory gravel a couple miles away. Perry said the difference on paper is 143,000 yards. Brett said if you add the initial overage, it comes out to a 189,000 yard difference that the town was reimbursed for. Perry said the number the town doesn't have is the number of yards in the "yellow" area, which should be subtracted from the total. Mr. Salsbury said they estimated 160,000 yards when they went to the planning board. A brief discussion followed on the many numbers of yards.

Brett asked if it was known how many yards had been extracted at the time of the extension request. Cynthia said it would be helpful to her to go through the sequential review that Mr. Salsbury had started. She asked if the blue and yellow spaces on the map displayed were the areas under discussion. Mr. Salsbury said they were.

Jo said there are a lot of questions. She said the word negligence had “pushed her buttons”. Brett said there was no paper trail for what was extracted. Jo said she would like to see the minute from whenever the transactions took place. She said big mistakes happen when assumptions are made, and apparently it was wrong to think a contract was in place. She said she was glad that Gott did not hesitate and sent the checks, and she thought there would be a fight. She said there is a lot of emotion, suspicion and doubt, and she didn’t know if anything could ever be done to satisfy that. He said she hoped the board could improve the way things are done in the future. She said she agreed it wasn’t the right way to do it. She said there is no need to accuse people of nefarious things. She said the Selectmen haven’t found a practical way to come up with another method of measuring the area.

John Wuorinen said there are aerial photographs that could be used. Jo said the Board explored the use of an independent firm such as Sewall Company, and the information they needed was not available. Mr. Alvarez said Sewall has the technology to do it, and they and Mr. Salsbury could work together to the same standards. Jo said she’d be willing to ask, but not willing to spend \$178,000. Mr. Alvarez said it would probably be less than \$5,000. Mr. Wuorinen said \$178,000 is far more than the process would cost. He said the amount of money for an independent study is modest and would lay to rest the uncertainty. He said he did not have an estimate of cost.

Brett asked if the agreements with the town and deeded rights of way were completed per the schedule. Mr. Salsbury said yes. Brett said Gott is using that area to access his land out back. Mr. Salsbury said they tried to resolve the right-of-way issue last year, but that was not successful. Brett asked where the area being excavated was when a fine was imposed near the beginning of the contract. Mr. Salsbury pointed out the area on the map. Brett said it doesn’t appear that a section of earth is missing. Mr. Salsbury said the 2001 agreement did not take into account a common line agreement on the back line. Brett asked if the area Mr. Salsbury surveyed was marked in blue and yellow. Mr. Salsbury said yes. Perry said that 25-feet of gravel on the abutting line is a lot of material.

Brett said he was baffled by additional agreements the Board did not have information on. Mr. Alvarez said there was a good chance for Gott and the Town to resolve the matter. Perry asked what would happen if the town ended up owing Gott \$50,000.

Mr. Salsbury said Andrew McCullough also certified the amount taken, and Gott paid for that. He said he and Mr. McCullough are both professionals with their reputations and stamps on the line.

Jo said the agenda item was to meet with Mr. Salsbury. She asked if there was any particular action to take. Mr. Alvarez said they should thank Herrick and Salsbury for attempting to settle the matter. Brett said there are some issues related to the money. Stu said that would come under the warrant action. He asked if the board wanted the minutes from 2001 and 2002 that pertained to this matter. Jo said yes. Perry said the other place to look for information is the Planning Board minutes.

Jo said it appears the Selectmen missed a step. She said she would like to have Richard present. She said she didn't know what the answer is. She said they would have to ask town meeting if an independent engineer were to be hired to determine the amount removed.

Brett said it would be helpful for new members of the Selectboard to receive a copy of the various contracts. A short discussion followed. Mr. Salsbury asked the Selectmen to let him know when they want to meet with him again.

**Flooring** – Stu reported he compiled a list of the proposals received and put them in the Selectmen's packet. Perry asked if the floor in the meeting room is the original schoolhouse floor. No one knew the answer to that. Brett said he didn't know if the floor could really be restored. Perry said if the floor couldn't be restored, then the board made a big mistake, and he asked what it would cost to put down a new wood floor. He suggested maybe an area rug by the meeting tables, and said he likes the character of a wood floor. Jane Fowler said an area rug would cause uneven fading in the flooring. Cynthia said she suggested an area rug at the last meeting as a temporary measure.

Brett said unless it was a really high quality area rug, grit from footwear would ruin the floor's finish. Perry said the question is whether the board wants carpet, vinyl or keep the floor with the character of the building. Brett said it would be a bad idea to make a choice just because it fits the budget. He said he personally liked the rubber backed carpet. Jo said she liked the rubber backed carpet too. She said she wondered what was so valuable about preserving the floor. She said she didn't know how much longer the town would be using this building. A short discussion followed on what each Selectman preferred for flooring.

Cynthia said she was interested in the floor being a wooden floor, and maintenance costs would have to be built in. She asked Mark Sarro if the rubber backed carpet came in more subdued colors. Mr. Sarro said the sample was part of a larger line, and he didn't know if there were other colors that could match the price he offered. Perry said the rubber backed carpet didn't fit the budget either. Cynthia asked if the board ought to get a price on a wood floor. Kathy DeFusco said if the board doesn't care about the floor; why not go with the vinyl. A short discussion followed, and a brief recess was taken at 7:58 PM.

When the meeting resumed at 8:02 PM, the flooring discussion continued. Jo asked if the board wanted to put this out to bid again. A short discussion followed. Dennis Ford suggested it might be worthwhile to come up with different types of flooring and dealers could come talk with the Selectmen about it. Brett said he would be glad to do the leg work on a difference in price between engineered flooring, hard wood flooring, and getting estimates on vinyl, along with the maintenance costs.

**Road Naming** – Perry moved to assign the name Coolidge Crossing to an entrance to Lamoine Beach Road. Jo 2<sup>nd</sup>. **Vote in favor was 4-0, Selectmen signed the naming order**

**Tweedie Cabin** – Stu explained that following the last meeting asking that a \$1,000 per day fine start he contacted Maine Municipal Association to find out the proper procedure. He said only a court can impose a fine without the other party's consent. The Selectmen have the right to enter a consent decree, so he drafted the decree that Jo signed, and sent it to Peter Roy, who was unable to attend tonight. Stu said Mr. Roy did not approve the agreement because of the fine issue. He said he redrafted the consent agreement today, and set a \$2,500 fine (the maximum one-day violation fine), gave them 90-days to fix the problem, and a \$1,000/day fine if it were not fixed in 90-days.

Jo said she would like to close the matter and have the clock start ticking on September 11, 2006, which was the date she signed the first consent agreement. Brett said he wanted the fine to hurt so the Tweedies might litigate with the contractor. Cynthia said Perry wanted to get an attorney's advice at last meeting. She asked how that process works because the town attorney is Tony Beardsley who is in partnership with Mr. Roy. Stu said the town would have to use a different attorney.

Jo said the board needs education on the whole topic and how it goes forward from here. She said her concern is the 90-days. Perry said while we're waiting on this, nothing is preventing the Tweedies from submitting an application to the Planning Board. He said they could have started the process. A short discussion followed on who to use for a town attorney.

Jo said it would be prudent to spend the money to hire an attorney, and moved to hire Jim Patterson to help resolve the Tweedie issue. Perry 2<sup>nd</sup>. **Vote in favor was 4-0.** Stu asked who could be a backup if Mr. Patterson were not available. Selectmen mentioned Nat Fenton, Chad Smith and Ed Bearor.

**Emergency Operations Plan** – Selectmen noted a typo on the cover page. Stu said he would correct that. Perry moved to adopt the plan. Brett 2<sup>nd</sup>. **Vote in favor was 4-0, Selectmen signed the plan.**

**Road Shoulder Work** – Perry said he would abstain from voting because his father's company is one of the bidders. Selectmen opened the bids, and read them as follow:

	<b>H. MacQuinn, Inc.</b>	<b>Richard King, Inc.</b>	<b>Jay Fowler</b>
Seal Point	Option 1 \$15,900 Option 2 \$10,800	\$23,225	\$9,424
Needles Eye	\$7,150	\$9,875	\$3,660
Asa's Lane	\$8,580	\$10,350	\$5,890
Maxwell Ave	\$2,200	\$2,300	\$1,525
Lorimer Rd	\$2,200	\$1,850	\$1,525
Marlboro Beach Rd.	\$5,200	\$7,700	\$3050

Brett asked Perry if there was any need to add material on some roads. Cynthia said some inch-minus was specified in the Fowler bid on Seal Point Road. A short discussion followed on fixing the Mitchell driveway entrance on Asa's Lane. Dennis asked Perry if they intended to run a roller on the shoulders. Perry said they could do it – a machine would be there sweeping anyway.

Jo moved to award the bids for all projects to Jay Fowler. Brett 2<sup>nd</sup>. **Vote in favor was 3-0, Fowler abstained.**

**Flag Display Program** – Stu said the draft before the board was what they asked for changes at the last meeting. Brett moved to approve it, Perry 2<sup>nd</sup>. **Vote in favor was 4-0, Selectmen signed the program.**

**Public Policy Forum** – Stu said a forum to discuss TABOR, High School funding at MDI High and a local option sales tax is planned for next Wednesday. He said he'd be glad to take anyone who wanted to carpool. A short discussion followed on the budget committee schedule.

**School Building Committee Update** – Stu said the committee plans a public forum on October 12<sup>th</sup> to gather public input. He said the school needs to work to get the word out on that. Jo said the town office could help if needed.

**Brownfields Meeting** – Stu said he was not able to attend a meeting on Brownfields held the day before. He said there probably are not any qualifying parcels in Lamoine.

**Transportation Plan Support** – Cynthia noted the County Planning Commission had requested a letter of support by September 14<sup>th</sup>. Stu said they didn't get the request sent in time for the last agenda. Jo read a portion of the memo. She moved to sign the letter. Cynthia 2<sup>nd</sup>. **Vote in favor was 4-0, Selectmen signed the letter.**

**Firearms Discharge Ordinance** – Stu said resident Barry Muise had approached him to ask if the Selectmen were interested in having an ordinance to place before town meeting. He said Mr. Muise produced the remains of a bullet that had been fired at a nearby gravel pit and ricocheted near the General Store.

Brett said any citizen could ask for an ordinance change. Jo said she has some interest in the idea. Perry said he sees Mr. Muise's point, but instead of an ordinance, this might be better to deal with the landowner directly. He said he noticed that the MacQuinn land was recently reposted.

Stu said if the Selectmen were interested in pursuing this he would research other towns for similar ordinances. John Wuorinen said the killing range for a rifle is 1-mile. He said if a firearm is discharged, it must be done in a responsible way. Dennis Ford said Lamoine is a town, not a city. He said the Department of Inland Fisheries and Wildlife has a set of laws to address the situation. Brett asked who enforces local ordinances. Jo

said she would like to look into what is available because this is a safety issue. Dennis said such an ordinance would hurt the guy who's trying to be legal.

Cynthia said Mr. Muise approached the town in the proper manner. She said we ought to look at what other towns have. Jo asked if it's necessary to have another ordinance. She said she would like to answer Mr. Muise's questions. Stu said he could do some research on the issue if the Selectmen desired. The board indicated that would be appreciated.

**Report of Failed Septic System** – Selectmen asked where this was located. Stu said at the end of Ash Lane. Dennis Ford said it started with a phone call to him of a possible failed system, which he referred to Deputy LPI Bob Sharkey. Dennis said Mr. Sharkey looked over the area with the complainant, and left Dennis a note that Mr. Sharkey had called the DEP and that the DEP was not concerned because it was not going into the ocean. He said Mr. Sharkey reported that he prodded the area in question with a stick and could smell what appeared to be effluent.

Dennis said he went to the site with a certified installer and checked the leach field. He said the earth was dry and there was no odor, and they could not find the problem. He said the owner agreed to do a dye test on the system. He said he didn't follow up with the installer to have the test done and the complainant called back. He said he got hold of the installer and they took the tablets down that day and gave the system a heavy dose of dye. He said there has been no sign of a breakout for a week or better.

Dennis said he spoke with the DEP and they've had a lot of complaints this year about septic systems because of high, lingering water levels. He said most of the complaints are unfounded; the smell is apparently from decaying material. He said the neighbors were adamant that Mr. Cutter ought to dig up his leach field, but there is no reason to at this point. He said there is no problem unless something shows up. He said if there is a problem, and the dye doesn't trace it to the Cutter's system, the neighboring systems would have to be investigated one by one.

Jo asked if the information in the memo the Selectmen received from Stu has been taken care of and that was communicated to the complainant. Stu said it would be a good idea to send a letter to the complainant and he would draft one up for Dennis. Cynthia said to make sure to let the complainant know that if they think there's a problem again they can call Dennis.

**Budget Goals** – Stu asked the Selectmen if they had any special projects they wanted to include in the budget being drafted. Brett asked about a new table for the meeting room. Stu said the town office really needs a new roof. Selectmen said flooring goes without saying. Jo said the effort to build a Veterans Memorial may seek a contribution from townspeople. Cynthia asked about salt/sand stuff. Stu said this is the last year of the plowing contract, and that should be put out to bid over the winter.

**Warrant 6** – Selectmen signed expenditure warrant 6 for \$412,078.50. Stu noted about \$125,000 was for school expenses, another \$250,000 was a transfer into the investment accounts, and \$17,100 was to Mike Jordan for the fire department roof job.

**Cash & Budget Report** – There were no questions about the Cash and Budget Report.

**Checking Account Review** – Selectmen signed the statement expressing satisfaction with the review of the checking account reconciliation.

**Fund Transfers** – Stu explained a memo he put into the packet concerning transfers of funds to bring the cash account balances in line with the actual fund balances after closing the books on FY 2006. He said he's also proposed to create two separately accounted for cash account – Parks and Harbor, as interest on those moneys should be accruing those funds. He said the initial check from Gott would go into a new fund called Capital Projects, and the just signed warrant put the money from the 2<sup>nd</sup> check into the same account. Jo moved to approve the proposed transfers. Perry 2<sup>nd</sup>. **Vote in favor was 4-0.**

**Other** – Sign on Asa's Lane – Dennis said there was concern expressed about speeding traffic on Asa's Lane and suggested some sort of sign be placed before the curve near Stacey Curtis's house. Selectmen said that was a good idea.

Flu Shots – Gerald Ford said the town ought to sponsor some sort of flu shot clinic. Stu said it's already been done and will happen November 15<sup>th</sup>.

**Road Name** – Perry moved to approve the name Duckling Lane for an entrance at 663 Lamoine Beach Road. Jo 2<sup>nd</sup>. **Vote in favor was 4-0; the road naming order was signed.**

**School Committee resignation** – Stu said he had heard through the grapevine that Nancy Sargent had resigned from the School Committee, so he checked with the school department and confirmed it. He said he encouraged the school department of the necessity to inform the town clerk of such affairs. He said the school committee intends to appoint a member to serve until the election next March.

**Letter from Robert Sharkey** – Stu said he placed a letter from Robert Sharkey to the Selectmen in the materials laid out tonight. Jo said she, as chair, should write a response to Mr. Sharkey. She said she didn't think that Stu should be asked to conduct Mr. Sharkey's research for him. Stu asked for a copy of the letter when Jo writes it.

**Resignation of Warren Craft from Appeals Board** – Jo moved to accept Mr. Craft's resignation with regret. Selectmen signed the letter doing so. There was a brief discussion over which alternate member of the appeals board had seniority and whom to offer the full board job. Selectmen instructed Stu to advertise for an alternate member right away.

**Request to trap coyotes on town lot** – Stu said Troy Dow, a Marine Patrol Officer, had asked for permission to set coyote traps on town land. He said he drafted up a letter with some possible conditions on such activity. Perry asked if the town would be liable for such traps. Michael Jordan said anyone can trap on public land without permission. Brett said he'd rather not voice an opinion one way or another. Jo said she would like to ask Maine Municipal Association about it. Selectmen took no action on the request.

**Next Meeting** – The next meeting will take place on October 5, 2006. There will be a site visit on September 23<sup>rd</sup> at 9AM at the Transfer Station.

**Executive Session** – Cynthia moved to enter executive session pursuant to 1 MRSA § 401 (6) (a) to discuss a personnel matter involving the administrative assistant. Jo 2<sup>nd</sup>.  
**Vote in favor was 4-0. In at 9:33 PM Out at 9:43 PM.**

Cynthia noted it would be helpful if Stu, when sending e-mail to the Selectmen, asked for a read receipt. Stu said he's not had good luck with those.

There being no further business, the meeting adjourned at 9:45 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst.